

ESTABLISHMENT OF STATE ETHICS**COMMISSION**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Phil Riesen

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill establishes a State Ethics Commission.

Highlighted Provisions:

This bill:

- ▶ establishes a state ethics commission;
- ▶ provides that certain commission proceedings are not subject to the Open and Public Meetings Act;
- ▶ requires that records provided to the commission be classified as protected records under the Government Records Access and Management Act unless all or part of the record is publicly released by the commission;
- ▶ provides that the commission shall hear certain ethics complaints filed against the governor, lieutenant governor, state attorney general, state treasurer, state auditor, and members of the Legislature;
- ▶ provides for membership of the commission;
- ▶ permits the commission to hire staff;
- ▶ requires the Department of Administrative Services to provide physical facilities and equipment for the commission and commission staff;
- ▶ provides for procedures for filing ethics complaints, responding to ethics complaints, and holding hearings in response to ethics complaints;



- 28 ▶ provides for the consolidation of multiple complaints;
- 29 ▶ provides that the commission may not schedule hearings or meetings in relation to
- 30 an ethics complaint filed immediately preceding an election under certain
- 31 circumstances;
- 32 ▶ provides that an ethics hearing is public;
- 33 ▶ permits the commission to issue private or public reprimands if it determines that an
- 34 ethics complaint is substantiated;
- 35 ▶ permits the commission to publicly release ethics complaints, responses to ethics
- 36 complaints, and records and documents related to ethics hearings in some
- 37 circumstances; and
- 38 ▶ requires the commission to issue an annual report of its activities.

39 Monies Appropriated in this Bill:

40 None

41 Other Special Clauses:

42 None

43 Utah Code Sections Affected:**44 AMENDS:**

45 **52-4-103**, as last amended by Laws of Utah 2007, Chapters 35 and 45

46 **63G-2-305**, as last amended by Laws of Utah 2008, Chapters 3, 87, 95, 101, 111, 161,
47 196, 248, 352 and renumbered and amended by Laws of Utah 2008, Chapter 382

48 ENACTS:

49 **63G-12-101**, Utah Code Annotated 1953

50 **63G-12-102**, Utah Code Annotated 1953

51 **63G-12-201**, Utah Code Annotated 1953

52 **63G-12-202**, Utah Code Annotated 1953

53 **63G-12-301**, Utah Code Annotated 1953

54 **63G-12-302**, Utah Code Annotated 1953

55 **63G-12-303**, Utah Code Annotated 1953

56 **63G-12-304**, Utah Code Annotated 1953

57 **63G-12-305**, Utah Code Annotated 1953

58 **63G-12-306**, Utah Code Annotated 1953

59 **63G-12-307**, Utah Code Annotated 1953

60 **63G-12-308**, Utah Code Annotated 1953

61

62 *Be it enacted by the Legislature of the state of Utah:*

63 Section 1. Section **52-4-103** is amended to read:

64 **52-4-103. Definitions.**

65 As used in this chapter:

66 (1) "Anchor location" means the physical location from which:

67 (a) an electronic meeting originates; or

68 (b) the participants are connected.

69 (2) "Convening" means the calling of a meeting of a public body by a person

70 authorized to do so for the express purpose of discussing or acting upon a subject over which

71 that public body has jurisdiction or advisory power.

72 (3) "Electronic meeting" means a public meeting convened or conducted by means of a

73 conference using electronic communications.

74 (4) (a) "Meeting" means the convening of a public body, with a quorum present,

75 including a workshop or an executive session whether the meeting is held in person or by

76 means of electronic communications, for the purpose of discussing, receiving comments from

77 the public about, or acting upon a matter over which the public body has jurisdiction or

78 advisory power.

79 (b) "Meeting" does not mean:

80 (i) a chance meeting;

81 (ii) a social meeting; or

82 (iii) the convening of a public body that has both legislative and executive

83 responsibilities where no public funds are appropriated for expenditure during the time the

84 public body is convened and:

85 (A) the public body is convened solely for the discussion or implementation of

86 administrative or operational matters for which no formal action by the public body is required;

87 or

88 (B) the public body is convened solely for the discussion or implementation of

89 administrative or operational matters that would not come before the public body for

discussion or action.

(5) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(6) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(7) (a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(ii) consists of two or more persons;

(iii) expends, disburses, or is supported in whole or in part by tax revenue; and

(iv) is vested with the authority to make decisions regarding the public's business.

(b) "Public body" does not include [a]:

(i) a political party, political group, or political caucus; [~~or~~]

(ii) a conference committee, rules committee, or sifting committee of the Legislature[-];

or

(iii) the State Ethics Commission established under Section 63G-12-201.

(8) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(9) (a) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

(b) "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

(10) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

Section 2. Section **63G-2-305** is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

121 (2) commercial information or nonindividual financial information obtained from a
122 person if:

123 (a) disclosure of the information could reasonably be expected to result in unfair
124 competitive injury to the person submitting the information or would impair the ability of the
125 governmental entity to obtain necessary information in the future;

126 (b) the person submitting the information has a greater interest in prohibiting access
127 than the public in obtaining access; and

128 (c) the person submitting the information has provided the governmental entity with
129 the information specified in Section 63G-2-309;

130 (3) commercial or financial information acquired or prepared by a governmental entity
131 to the extent that disclosure would lead to financial speculations in currencies, securities, or
132 commodities that will interfere with a planned transaction by the governmental entity or cause
133 substantial financial injury to the governmental entity or state economy;

134 (4) records the disclosure of which could cause commercial injury to, or confer a
135 competitive advantage upon a potential or actual competitor of, a commercial project entity as
136 defined in Subsection 11-13-103(4);

137 (5) test questions and answers to be used in future license, certification, registration,
138 employment, or academic examinations;

139 (6) records the disclosure of which would impair governmental procurement
140 proceedings or give an unfair advantage to any person proposing to enter into a contract or
141 agreement with a governmental entity, except, subject to Subsection (1) and (2), that this
142 Subsection (6) does not restrict the right of a person to have access to, once the contract or
143 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
144 entity in response to:

145 (a) a request for bids;

146 (b) a request for proposals;

147 (c) a grant; or

148 (d) other similar document;

149 (7) records that would identify real property or the appraisal or estimated value of real
150 or personal property, including intellectual property, under consideration for public acquisition
151 before any rights to the property are acquired unless:

152 (a) public interest in obtaining access to the information outweighs the governmental
153 entity's need to acquire the property on the best terms possible;

154 (b) the information has already been disclosed to persons not employed by or under a
155 duty of confidentiality to the entity;

156 (c) in the case of records that would identify property, potential sellers of the described
157 property have already learned of the governmental entity's plans to acquire the property;

158 (d) in the case of records that would identify the appraisal or estimated value of
159 property, the potential sellers have already learned of the governmental entity's estimated value
160 of the property; or

161 (e) the property under consideration for public acquisition is a single family residence
162 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
163 the property as required under Section 78B-6-505;

164 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
165 compensated transaction of real or personal property including intellectual property, which, if
166 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
167 of the subject property, unless:

168 (a) the public interest in access outweighs the interests in restricting access, including
169 the governmental entity's interest in maximizing the financial benefit of the transaction; or

170 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
171 the value of the subject property have already been disclosed to persons not employed by or
172 under a duty of confidentiality to the entity;

173 (9) records created or maintained for civil, criminal, or administrative enforcement
174 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
175 release of the records:

176 (a) reasonably could be expected to interfere with investigations undertaken for
177 enforcement, discipline, licensing, certification, or registration purposes;

178 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
179 proceedings;

180 (c) would create a danger of depriving a person of a right to a fair trial or impartial
181 hearing;

182 (d) reasonably could be expected to disclose the identity of a source who is not

generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be

214 privileged as provided in Section 78B-1-137;

215 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
216 from a member of the Legislature; and

217 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
218 legislative action or policy may not be classified as protected under this section; and

219 (b) (i) an internal communication that is part of the deliberative process in connection
220 with the preparation of legislation between:

221 (A) members of a legislative body;

222 (B) a member of a legislative body and a member of the legislative body's staff; or

223 (C) members of a legislative body's staff; and

224 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
225 legislative action or policy may not be classified as protected under this section;

226 (20) (a) records in the custody or control of the Office of Legislative Research and
227 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
228 legislation or contemplated course of action before the legislator has elected to support the
229 legislation or course of action, or made the legislation or course of action public; and

230 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
231 Office of Legislative Research and General Counsel is a public document unless a legislator
232 asks that the records requesting the legislation be maintained as protected records until such
233 time as the legislator elects to make the legislation or course of action public;

234 (21) research requests from legislators to the Office of Legislative Research and
235 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
236 in response to these requests;

237 (22) drafts, unless otherwise classified as public;

238 (23) records concerning a governmental entity's strategy about collective bargaining or
239 pending litigation;

240 (24) records of investigations of loss occurrences and analyses of loss occurrences that
241 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
242 Uninsured Employers' Fund, or similar divisions in other governmental entities;

243 (25) records, other than personnel evaluations, that contain a personal recommendation
244 concerning an individual if disclosure would constitute a clearly unwarranted invasion of

245 personal privacy, or disclosure is not in the public interest;

246 (26) records that reveal the location of historic, prehistoric, paleontological, or
247 biological resources that if known would jeopardize the security of those resources or of
248 valuable historic, scientific, educational, or cultural information;

249 (27) records of independent state agencies if the disclosure of the records would
250 conflict with the fiduciary obligations of the agency;

251 (28) records of an institution within the state system of higher education defined in
252 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
253 retention decisions, and promotions, which could be properly discussed in a meeting closed in
254 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
255 the final decisions about tenure, appointments, retention, promotions, or those students
256 admitted, may not be classified as protected under this section;

257 (29) records of the governor's office, including budget recommendations, legislative
258 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
259 policies or contemplated courses of action before the governor has implemented or rejected
260 those policies or courses of action or made them public;

261 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
262 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
263 recommendations in these areas;

264 (31) records provided by the United States or by a government entity outside the state
265 that are given to the governmental entity with a requirement that they be managed as protected
266 records if the providing entity certifies that the record would not be subject to public disclosure
267 if retained by it;

268 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
269 except as provided in Section 52-4-206;

270 (33) records that would reveal the contents of settlement negotiations but not including
271 final settlements or empirical data to the extent that they are not otherwise exempt from
272 disclosure;

273 (34) memoranda prepared by staff and used in the decision-making process by an
274 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
275 other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

307 (I) the institution within the state system of higher education defined in Section
308 53B-1-102; or

309 (II) a sponsor of sponsored research;

310 (iii) unpublished manuscripts;

311 (iv) creative works in process;

312 (v) scholarly correspondence; and

313 (vi) confidential information contained in research proposals;

314 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
315 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

316 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

317 (41) (a) records in the custody or control of the Office of Legislative Auditor General
318 that would reveal the name of a particular legislator who requests a legislative audit prior to the
319 date that audit is completed and made public; and

320 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
321 Office of the Legislative Auditor General is a public document unless the legislator asks that
322 the records in the custody or control of the Office of Legislative Auditor General that would
323 reveal the name of a particular legislator who requests a legislative audit be maintained as
324 protected records until the audit is completed and made public;

325 (42) records that provide detail as to the location of an explosive, including a map or
326 other document that indicates the location of:

327 (a) a production facility; or

328 (b) a magazine;

329 (43) information:

330 (a) contained in the statewide database of the Division of Aging and Adult Services
331 created by Section 62A-3-311.1; or

332 (b) received or maintained in relation to the Identity Theft Reporting Information
333 System (IRIS) established under Section 67-5-22;

334 (44) information contained in the Management Information System and Licensing
335 Information System described in Title 62A, Chapter 4a, Child and Family Services;

336 (45) information regarding National Guard operations or activities in support of the
337 National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Homeland Security information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be

kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(55) (a) records of the Utah Educational Savings Plan Trust created under Section 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

(b) proposals submitted to the Utah Educational Savings Plan Trust; and

(c) contracts entered into by the Utah Educational Savings Plan Trust and the related payments; ~~and~~

(56) records contained in the Management Information System created in Section 62A-4a-1003[-]; and

(57) records filed with or in the custody or control of the State Ethics Commission in relation to an ethics complaint or hearing, unless the record has been declared a public record under Section 63G-12-308.

Section 3. Section **63G-12-101** is enacted to read:

CHAPTER 12. STATE ETHICS COMMISSION ACT

Part 1. General Provisions

63G-12-101. Title.

This chapter is known as the "State Ethics Commission Act."

Section 4. Section **63G-12-102** is enacted to read:

63G-12-102. Definitions.

As used in this chapter:

(1) "Respondent" means the individual against whom an ethics complaint is filed.

(2) "Witness" means any of the following persons when offering testimony at an ethics hearing held in response to an ethics complaint filed under this chapter:

(a) the person who filed the ethics complaint;

(b) the respondent; or

(c) any other person offering testimony during the ethics hearing.

Section 5. Section **63G-12-201** is enacted to read:

Part 2. State Ethics Commission

63G-12-201. State Ethics Commission -- Creation -- Membership.

(1) There is created a State Ethics Commission composed of five members as follows:

(a) a member designated by the governor;

(b) a member designated by the president of the Senate;

(c) a member designated by the minority leader of the Senate;

(d) a member designated by the speaker of the House of Representatives; and

(e) a member designated by the minority leader of the House of Representatives.

(2) (a) Each member of the commission shall be registered to vote in the state.

(b) A member of the commission may not, during the member's term of office on the commission, act or serve as:

(i) an officeholder as defined in Section 20A-11-101;

(ii) an agency head as defined in Section 67-16-3;

(iii) a lobbyist as defined in Section 36-11-102; or

(iv) a principal as defined in Section 36-11-102.

(3) (a) (i) Except as required by Subsection (3)(a)(ii), each member shall serve a four-year term.

(ii) At the time the commission is created:

(A) the members selected by the governor, the president of the Senate, and the minority leader of the Senate shall be appointed to four-year terms; and

(B) the members selected by the speaker of the House of Representatives and the minority leader of the House of Representatives shall be appointed to two-year terms.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be

431 appointed for the unexpired term.

432 (c) A member may not be appointed for or serve more than two full terms.

433 (4) The commission shall annually elect, by a majority vote, a commission chair from
434 its membership.

435 (5) The commission shall meet:

436 (a) upon the request of the chair of the commission;

437 (b) upon the written request of a majority of the members of the commission; or

438 (c) in response to an ethics complaint filed and accepted under Section 63G-12-301.

439 (6) Except as specifically required elsewhere in this chapter, attendance of a majority
440 of the members of the commission shall constitute a quorum for the conducting of business and
441 the taking of official action.

442 (7) (a) Commission members who are not government employees may not receive
443 compensation or benefits for their services, but may receive per diem and expenses incurred in
444 the performance of the member's official duties at the rates established by the Division of
445 Finance under Sections 63A-3-106 and 63A-3-107.

446 (b) A commission member may decline to receive per diem and expenses for service to
447 the commission.

448 Section 6. Section **63G-12-202** is enacted to read:

449 **63G-12-202. State Ethics Commission -- Duties.**

450 (1) The State Ethics Commission shall:

451 (a) receive and review ethics complaints filed in accordance with the requirements of
452 this chapter;

453 (b) conduct hearings and make recommendations in response to ethics complaints as
454 provided for in this chapter;

455 (c) annually prepare and make available for public inspection, a report describing, for
456 the previous year:

457 (i) the number of ethics complaints filed with the commission;

458 (ii) the number of ethics complaints that resulted in a hearing before the commission;

459 (iii) the number of hearings that resulted in a finding that the ethics complaint that was
460 the subject of the hearing was substantiated or partially substantiated;

461 (iv) a brief summary of the decision issued in relation to each hearing conducted by the

commission, provided that the summary does not contain any information that might identify a participant in a hearing, unless the information has been publicly released under Subsection 63G-12-308(3);

(v) a copy of all hearing decisions that were issued and publicly released by the commission under Section 63G-12-308; and

(vi) any other documents or information that a majority of the members of the commission elect to include in the report; and

(d) make forms to facilitate the filing and processing of ethics complaints and responses to ethics complaints in accordance with the requirements of this chapter.

(2) The commission may hire staff, including counsel, as necessary.

(3) The Department of Administrative Services shall provide the commission and commission staff with the physical facilities and equipment necessary for the commission to carry out its responsibilities as provided in this chapter.

Section 7. Section **63G-12-301** is enacted to read:

Part 3. Ethics Complaints and Hearings

63G-12-301. Ethics complaints -- Requirements -- Filing -- Confidentiality --

Notice of filing.

(1) A person may file a written ethics complaint against a member of the Utah State Legislature, the governor, the lieutenant governor, the attorney general, the state auditor, or the state treasurer, alleging a violation of:

(a) Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act;

(b) Title 36, Chapter 19, Conflicts of Interest;

(c) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; or

(d) Title 76, Chapter 8, Offenses Against the Administration of Government.

(2) (a) The ethics complaint shall be submitted to the State Ethics Commission, and shall contain:

(i) the name, address, and telephone number of the person filing the complaint;

(ii) the name of the individual against whom the complaint is filed;

(iii) for each violation alleged:

(A) a reference to the statute alleged to have been violated; and

(B) a statement of the facts and circumstances constituting the alleged violation; and

493 (iv) all documents that support the complaint, as an attachment.

494 (b) If any of the facts or circumstances supporting the complaint are based upon the
495 information and belief of the complainant, the complaint shall state that the facts are presented
496 "upon information and belief" and give the basis for that information and belief.

497 (3) (a) Each ethics complaint filed under this section shall contain the signature of the
498 person filing the complaint.

499 (b) An ethics complaint may list the names of additional persons supporting the filing
500 of the complaint, provided that each such person provides the person's:

501 (i) name;

502 (ii) address; and

503 (iii) signature.

504 (c) Notices and documents required under this section shall be provided to the person
505 filing the complaint.

506 (4) In accordance with Section 63G-2-305, all records related to an ethics complaint
507 are classified as a protected record, and no commission member or staff may publicly disclose
508 any information received by the commission concerning any complaint or alleged violation
509 unless the commission elects to publicly disclose the information as provided under Subsection
510 63G-12-308(3).

511 (5) Any ethics complaint that is filed with the commission that does not meet the
512 requirements of this section shall be returned to the person who filed the ethics complaint with
513 a statement that:

514 (a) declares that the ethics complaint is deficient and has not been accepted;

515 (b) lists each deficiency that must be corrected in order for the complaint to meet the
516 requirements of this section; and

517 (c) as applicable, declares that the violation alleged or the individual identified in the
518 complaint is not within the jurisdiction of the commission.

519 (6) Within three business days after receipt of the complaint, staff for the commission
520 shall:

521 (a) (i) except as provided in Subsection (6)(a)(ii), schedule a preliminary review
522 meeting no less than 25 and no more than 45 days after the date the complaint was filed; or

523 (ii) if an ethics complaint is filed within the 60 days immediately preceding the date of

an election and the complaint makes allegations against an individual who is a candidate in the election, schedule a preliminary review meeting after the date of the election, but no later than 25 days after the date of the election, unless the respondent consents, in writing, to scheduling a preliminary review meeting in accordance with the requirements of Subsection (6)(a)(i);

(b) notify each commission member of the date, time, and place of the preliminary review meeting;

(c) provide each commission member with a copy of the complaint; and

(d) provide the respondent with:

(i) a copy of the complaint; and

(ii) written notice that the individual may file a written response to the complaint with the commission within 20 days of the date of the notice, as provided in Section 63G-12-302.

(7) (a) Upon a majority vote of the commission, multiple ethics complaints may be consolidated into one action if:

(i) the ethics complaints are filed against the same respondent; and

(ii) the alleged violations raised in the ethics complaints are substantially similar.

(b) If multiple ethics complaints are consolidated under this Subsection (7), the commission shall:

(i) designate, from among the persons who filed a complaint that was consolidated, up to three persons that will be designated as the filers of the consolidated complaint for the purposes of administering this chapter; and

(ii) provide notice of the consolidation and of the designation of complainants to:

(A) the respondent; and

(B) each person who filed a complaint that was consolidated.

(8) The procedures, actions, and recommendations of the State Ethics Commission shall be independent of and separate from any other investigations, penalties, or prosecutions associated with an ethics-related offense.

Section 8. Section **63G-12-302** is enacted to read:

63G-12-302. Response to ethics complaint.

(1) Within 20 calendar days after the date the commission sends notice of the filing of an ethics complaint, the respondent may file a written response to the complaint, which must be signed by the respondent or the respondent's counsel.

555 (2) The respondent shall limit the response to the following:

556 (a) an admission or denial of each count, under oath, with any supportive evidence or
557 relevant information;

558 (b) an objection to any or all counts on the grounds that the count fails to state facts
559 that constitute a violation of any law; and

560 (c) an objection to the jurisdiction of the commission in considering the allegations
561 contained in the complaint.

562 (3) If the respondent fails to submit a response to the ethics complaint or to any count
563 contained in it, the commission may determine that the failure to respond constitutes an
564 admission of the alleged violation.

565 (4) Within three business days after receipt of a response filed under this section, staff
566 for the commission shall provide a copy of the response to:

567 (a) each commission member; and

568 (b) the person who filed the ethics complaint.

569 Section 9. Section **63G-12-303** is enacted to read:

570 **63G-12-303. Preliminary review meeting.**

571 (1) A preliminary review meeting is closed to the public and is not subject to the
572 requirements of Title 52, Chapter 4, Open and Public Meetings Act.

573 (2) At the preliminary review meeting, the commission shall determine, by a majority
574 vote, whether:

575 (a) a hearing should be held to address the allegations in the ethics complaint; or

576 (b) no action shall be taken on the complaint.

577 (3) (a) If the commission determines that a hearing shall be held to address the
578 complaint, the commission shall schedule an ethics hearing according to the procedures of
579 Section 63G-12-304.

580 (b) If a majority of the commission members elect to take no action on the complaint,
581 the commission shall:

582 (i) provide written notice that the commission has chosen to take no action on the
583 complaint to:

584 (A) the person that filed the complaint; and

585 (B) the respondent; and

(ii) classify the complaint and information related to the complaint as a protected record as provided under Section 63G-2-305.

Section 10. Section **63G-12-304** is enacted to read:

63G-12-304. Ethics hearing -- Notice -- Response -- Procedures -- Subpoena powers.

(1) (a) If an ethics hearing is authorized under Section 63G-12-303, the chair shall, within three business days of the date of the preliminary review meeting:

(i) except as provided in Subsection (1)(b), schedule an ethics hearing for a date that is no less than 30 and no more than 75 days after the date of the preliminary review meeting;

(ii) provide a notice of the procedures that are to be used in relation to the hearing and notice of the date, time, and location of the hearing to:

(A) the person that filed the complaint; and

(B) the respondent; and

(iii) provide notice of the date, time, and location of the hearing to each commission member.

(b) An ethics hearing may not be scheduled during the ten-day period immediately following the date of an election if the respondent was a candidate in the election, unless the respondent consents, in writing, to schedule the hearing during this period.

(2) An ethics hearing is open to the public notwithstanding any other provision of law.

(3) (a) In relation to any ethics hearing authorized by this chapter, the commission may require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of any materials that the commission considers necessary.

(b) The chair of the commission may direct commission staff to issue subpoenas:

(i) to require the attendance of witnesses;

(ii) to direct the production of evidence; or

(iii) that require both attendance and production of evidence.

Section 11. Section **63G-12-305** is enacted to read:

63G-12-305. Ethics hearing -- Discretion of chair -- Right to counsel -- Standards -- Subpoenas -- Contempt -- Scope of hearing.

(1) (a) The person who filed the ethics complaint, the respondent, and all other persons testifying before the commission have the right to counsel during all stages of the ethics

617 hearing.

618 (b) (i) Except as otherwise specifically provided for in this chapter, during the ethics
619 hearing, counsel for a person shall confine the counsel's activity exclusively to private advice to
620 the client about the client's legal rights.

621 (ii) Counsel for a person may not:

622 (A) advise a witness during the witness's testimony, except when specifically requested
623 by the person;

624 (B) address the commission, except as otherwise specifically provided in this chapter;

625 (C) ask questions of any witness, including the counsel's client; or

626 (D) engage in oral arguments with the commission, except as otherwise specifically
627 provided in this chapter.

628 (c) The witness's counsel may not suggest testimony and answers to the witness during
629 the inquiry, but must allow the witness to present testimony and answer questions without
630 prompting or suggestions.

631 (d) If the witness's counsel fails to comply with any of this section's requirements, the
632 chair may exclude the counsel from the ethics hearing.

633 (2) (a) (i) The chair of the commission shall direct the commission on procedural
634 matters during the ethics hearing.

635 (ii) If a commission member objects to a decision of the chair, that member may appeal
636 the decision to the commission by stating: "I appeal the decision of the chair."

637 (iii) This motion is nondebtable.

638 (iv) The chair shall direct a roll call vote to determine if the commission membership
639 supports the decision of the chair.

640 (v) A majority vote of the commission is necessary to overrule the decision of the
641 chair.

642 (b) At the direction of the commission chair, the commission may:

643 (i) administer oaths and take the testimony of any person under oath; and

644 (ii) compel any person to produce for examination any books, papers, or other
645 information concerning the matters raised by the ethics complaint.

646 (3) A witness may not invoke the Fifth Amendment privilege not to incriminate oneself
647 if the witness cannot be prosecuted for the crime to which the witness's testimony relates.

648 (4) (a) (i) A witness's disobedience to the direction of the chair or a direction of the
649 majority of the members of the commission to answer a question, to appear in response to a
650 subpoena, to produce evidence in response to a subpoena, or to otherwise comply with a
651 subpoena or subpoena duces tecum, constitutes contempt.

652 (ii) The chair's direction to answer a question may be overruled only by a vote of the
653 majority of the commission members present.

654 (b) A majority of the members of the commission may compel obedience to the
655 commission's requirements by directing staff to file a contempt proceeding in the district court
656 for Salt Lake County against a person who:

657 (i) fails to comply with a subpoena or a subpoena duces tecum;

658 (ii) refuses to answer a question relevant to the investigation that does not infringe on
659 the person's constitutional rights; or

660 (iii) is guilty of contempt on any other ground specified in statute or recognized at
661 common law.

662 (5) (a) The scope of the ethics hearing is limited to the alleged violations stated in the
663 ethics complaint.

664 (b) Only relevant or material evidence is admissible in the hearing.

665 (c) The chair's determination of admissibility is final and may be overruled only by a
666 majority vote of the commission.

667 Section 12. Section **63G-12-306** is enacted to read:

668 **63G-12-306. Ethics hearing -- Procedures for argument and testimony.**

669 (1) The commission shall permit opening statements to be provided by:

670 (a) the person who filed the ethics complaint or that person's counsel; and

671 (b) the respondent or the respondent's counsel.

672 (2) (a) After hearing opening statements, at the direction of the chair, the commission
673 may hear the testimony of:

674 (i) the person who filed the ethics complaint;

675 (ii) witnesses called by the person who filed the ethics complaint;

676 (iii) the respondent;

677 (iv) witnesses called by the respondent; and

678 (v) witnesses called by the commission.

(b) Each witness shall testify under oath.

(c) The chair shall permit each witness to make a brief opening statement if the witness desires.

(d) The chair shall direct the examination of the witness as follows:

(i) After the witness's presentation, the chair shall:

(A) give commission members the opportunity to question the witness; and

(B) give the respondent the opportunity to question the witness.

(ii) The chair may allow further examination of the witness by the commission, the person filing the complaint, or the respondent.

(e) (i) If a witness objects to a question, the chair may direct the witness to answer.

(ii) If the witness still declines to answer the question, the witness may be held in contempt as provided in Subsection 63G-12-305(4).

(f) The chair shall direct each witness to furnish any relevant evidence for the commission's consideration if the witness has brought the material voluntarily or has been required to bring it by subpoena.

(g) If the witness declines to provide evidence in response to a subpoena, the witness may be held in contempt as provided in Subsection 63G-12-305(4).

(h) The chair may allow a witness to insert into the record a sworn written statement of reasonable length that is relevant to the purpose, subject matter, and scope of the hearing.

(3) The commission shall permit closing statements to be provided by:

(a) the person that filed the ethics complaint or that person's counsel; and

(b) the respondent or the respondent's counsel.

Section 13. Section **63G-12-307** is enacted to read:

63G-12-307. Ethics hearing -- Record.

(1) The chair shall ensure that:

(a) a record of the ethics hearing is made; and

(b) the record includes:

(i) rulings of the chair;

(ii) questions from the committee and its staff;

(iii) the testimony and responses of witnesses;

(iv) sworn statements submitted to the commission;

(v) relevant documents; and

(vi) any other matters that a commission member directs.

(2) After the ethics hearing is completed, the commission's staff shall keep a file containing a comprehensive summary of the inquiry.

Section 14. Section **63G-12-308** is enacted to read:

63G-12-308. Ethics hearing -- Decision by commission -- Recommendations -- Public release of certain records.

(1) At the conclusion of the ethics hearing, or within five business days after the conclusion of the ethics hearing, the commission shall meet and determine, by a majority vote:

(a) whether each alleged violation in the complaint is within the jurisdiction of the commission;

(b) whether each alleged violation is substantiated by a preponderance of the evidence; and

(c) what recommendations should be made by the commission in accordance with the requirements of this section.

(2) A meeting conducted according to the requirements of this section is closed to the public and is not subject to the requirements of Title 52, Chapter 4, Open and Public Meetings Act.

(3) (a) If the commission determines that no issue raised by the ethics complaint is within the jurisdiction of the commission, the commission shall provide notice of that decision to the person who filed the ethics complaint and the respondent within ten business days after the conclusion of the ethics hearing.

(b) If the commission determines that the ethics complaint is unsubstantiated, the commission shall provide notice of that decision to the person who filed the ethics complaint and the respondent within ten business days after the conclusion of the ethics hearing.

(c) If the commission determines that the ethics complaint is substantiated in whole or in part, the commission shall provide the person who filed the ethics complaint and the respondent with, within ten business days after the conclusion of the ethics hearing, a decision that contains the following:

(i) the name of the respondent;

(ii) the name of the person filing the ethics complaint;

741 (iii) the date, time, and location of the ethics hearing;
742 (iv) for each alleged violation that was raised in the ethics complaint:
743 (A) a statement of the alleged violation;
744 (B) the commission's determination that the alleged violation is:
745 (I) unsubstantiated;
746 (II) substantiated in part;
747 (III) substantiated; or
748 (IV) not within the jurisdiction of the commission; and
749 (C) a statement of the facts and legal conclusions that the commission relied upon to
750 make its determination;
751 (v) a statement of the commission's recommendations in relation to each alleged
752 violation, which may be:
753 (A) a private reprimand of the respondent;
754 (B) a public reprimand of the respondent; or
755 (C) a statement declining to issue a reprimand to the respondent;
756 (vi) any other matters that a majority of the commission elects to include in the
757 statement;
758 (vii) the name of each member of the commission; and
759 (viii) the signature of the chair of the commission.
760 (4) If the commission determines that the ethics complaint is substantiated or partially
761 substantiated, the commission may elect, by a majority vote, to classify all or part of the
762 following records as a public document:
763 (a) the decision issued under Subsection (3);
764 (b) the ethics complaint filed in relation to the hearing;
765 (c) the respondent's response to the ethics complaint;
766 (d) the record of the ethics hearing; and
767 (e) any other document or evidence received by the commission in relation to the ethics
768 complaint filed in relation to the hearing.

Legislative Review Note
as of 1-7-09 1:10 PM

Office of Legislative Research and General Counsel

H.B. 93 - Establishment of State Ethics Commission

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will require \$159,100 ongoing to fund 1.5 FTE to staff the commission with associated salary, benefits, and related expenses and \$5,000 one-time in FY 2009 to acquire furnishings and equipment for the staff.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$159,100	\$159,100	\$0	\$0	\$0
General Fund, One-Time	\$0	\$5,000	\$0	\$0	\$0	\$0
Total	\$0	\$164,100	\$159,100	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
